IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Ramesh Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.227/1996)

2. Rajmal @ Raju Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.236/1996)

3. Bajrang Lal Vs. State of Rajasthan
(D.B. CRIMINAL JAIL APPEAL NO.488/1996)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 2-2-1996 in Sessions Case No.124/1993 passed by Sh. Bhimsen Lekhra, RHJS, Sessions Judge Bundi.

Date of Judgment: October 05, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Kamlakar Sharma, for the appellants.

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants were convicted and sentenced by the learned Sessions Judge Bundi as under:-

Ramesh:

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.100/-.

U/s.376(2) IPC:

To suffer imprisonment for life and fine of Rs.100/-.

Bajrang Lal and Rajmal @ Raju:
U/s.302/34 IPC:

Each to suffer imprisonment for life and fine of Rs.100/-.

U/s.376(2) IPC:

Each to suffer imprisonment for life and fine of Rs.100/-.

The substantive sentences were ordered to run concurrently.

2. The three appeals preferred against the finding of conviction were however allowed by this court and the appellants stood acquitted of the said charges. The finding of acquittal was primarily founded on the assumption that since the star witness of the prosecution viz. Rukma (Pw.4) behaved as if she was accomplice, her evidence could not have been relied upon. This finding of acquittal has been set aside by the Supreme Court. Vide order dated July 11, 2006, Their Lordships of the Supreme Court remanded the case to decide it afresh with the following observations:-

> "In view of the order proposed to be passed by us, we do not intend to enter into the merit of the matter. We are of the opinion that the Division Bench of the High Court appears to have committed a manifest error in proceeding on the basis that PW-4 Rukma was an accomplice. In any event, no sufficient or cogent reason has been assigned in support of the said conclusion. Furthermore, once that part of the finding of the High Court is set aside, the evidence of PW-4 could undoubtedly be considered for proving the prosecution case, as she was not an accomplice. Necessarily the other part of the judgment cannot be sustained. The High Court, in our opinion, should have dealt with the findings of fact arrived at by the learned Sessions Judge and considered the matter more closely and examined the materials brought on records by the prosecution."

3. We have heard learned counsel for the appellants as well as learned Public Prosecutor and with their assistance closely scanned the judgment of learned trial Judge and the other materials on record.

4. It is the prosecution case that Hajari Lal (Pw.2) Administrator

of Gram Panchayat Baswada forwarded a written report to Police Station Lakheri on January 30, 1993 through one Ram Niwas for taking into custody a dead body that was lying on the road between Bada Kheda and Baswada. Upon the said written report, Police Station Lakheri initiated proceedings under section 174 CrPC and a criminal case under section 302 IPC was registered. In the course of investigation the deceased was identified as Foriya by one Rukma (Pw.4), who deposed that deceased was her husband by Nata. She also stated that Ramesh Chand, Rajmal and Bajrang Lal (appellants) committed murder of her husband, raped her and forcibly took her anklet and nose pin. The police aided sections 376 and 394 IPC along with section 3 SC/ST (PA) Act,1989 and investigation commenced. Necessary memos were drawn, statements of witnesses got recorded, the appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Sessions Judge Bundi. Charges under sections 302, 302/34, 376 and 392 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 36 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. On hearing final submissions learned Sessions Judge convicted and sentenced the appellants as indicated herein above. The appellants were however acquitted of the charge under section 392 IPC.

5. The prosecution case is founded on the testimony of Rukma (Pw.4). In the opinion of learned trial Judge Rukma was a witness of sterling worth. The infirmities shown in the testimony of Rukma were found by him as insignificant and not fatal to the prosecution case.

6. In order to adjudge the finding of learned trial Judge it is necessary to closely scrutinize the evidence of Rukma (Pw.4). In her deposition she stated that the appellants killed Foriya by inflicting knife blows on his person and took her with them. She had to live with appellant Ramesh for two days and three nights and one day finding Ramesh sleeping, she some how escaped and reached to the police station Indergarh where she narrated the incident to the SHO who got the report noted down and she put her thumb impression on the report. She remained in the police station for about 15 days. Relevant portion of Rukma's statement reads as under:-

> "गांव से पहूंचने पर हम बाबाजी के घर में रहे थे। रमेंश तो सो ही रहा था, और मैं जल्दी उठकर बाहर निकली तो बाहर एक औरत मुझे गोबरी उठाती मिली, जिससे मैंने पूछा कि बाई यहां कौनसा थाना लगता है, तो उसने बताया कि यहां का थाना इन्द्रगढ लगना बताया। वहां से मैं मोटर में बैठकर इन्द्रगढ आयी। .... बस वाले ने मेरे को थाने के बाहर उतार दिया जहां एक सिपाही खडा था, बस वाले ने सिपाही से कहा था कि इस बाई को अन्दर ले जाना। इस पर मैं उसके साथ अन्दर चली गई तो अन्दर थाने में मेरे से पूछताछ की तो मैंने थाने मे सारा वाका बताया। ... थाने में करीब 15 दिन रही होगी, यानि जब तक मुलजिमान पकडने में नहीं आये तब तक थाने में रही। ... मुलजिमान को पकडने के बाद भी मैं थाने में 6-7-8 दिन रही थी। ... मैं लाखेरी थाने में ही रही थी। मैंने इन्द्रगढ के थानेदार को पूरी बात बताई थी और उन्होने मेरी बात को लिखा भी था और मेरा अंगूठा भी करवाया था। मेरे से करीबन 1 घन्टा पूछताछ की होगी।"

7. Rukma also admitted to have lodged the report at Police Station Lakheri:-

> "मैंने फिर आकर लाखेरी में भी रिपोर्ट लिखाई थी और वहां भी मेरी रिपोर्ट लिखी गई थी तथा मेरा अंगूठा करवाया था।"

8. After the incident Rukma had crossed the river while climbing on the shoulders of appellant Ramesh:-

> "फोरिया को मारने के बाद हम जब गये तो नदी आई थी। नदी का पानी कमर कमर था। नदी में

मेरे कपडे भीगे नहीं थे, क्योंकि रमेश ने मेरे को मोरों पर बैठाकर नदी पार करवाई थी।"

She was also made to ride on the boat in the company of many persons:-

" ... मुझे नाव में बैठाया था। ... उस समय नाव में बहुत सारे आदमी थे।"

9. Rukma and appellant Ramesh together visited and stayed at various places. Rukma herself told Babu Lal (Pw.5) that she and Ramesh were sister and brother as she was the daughter of maternal aunt of Ramesh.

10. Bhanwar Lal Sharma, Investigating Officer (Pw.36) admitted that Rukma came to the Police Station Lakheri on January 31, 1993 and she remained in the quarter of police station under the control of lady police. The statement of Rukma under section 164 CrPC got recorded on February 9, 1993. Bhanwar Lal Sharma deposed as under:-

"एस. एच. ओ. इन्द्रगढ मुस. रूकमा को खुद मेरे पास लेकर आये थे। मेरे लिये मैंने थाना इन्द्रगढ से रोजनामचा दर्ज रिपोर्ट की कोई नकल प्राप्त नहीं की क्योंकि यह मुस. रूकमा के साथ घटित अपराध के पूर्व में थाना लाखेरी में मुकदमा अज्ञात मुलजिमान में दर्ज हो चुका था। मैंने थानेदार सा. इन्द्रगढ का बयान नहीं लिया। मैं भी थाने इन्द्रगढ पर कोई रिपोर्ट प्राप्त करने भी नहीं गया। मुस. रूकमा 31-1-93 को मेरे पास थाने पर आ गई फिर कितने दिन थाने पर रही यह मुझे अब याद नहीं है क्योंकि बहुत समय हो चुका है। मुकदमा हाजा के दीगर कार्यवाही के पश्चात ही मुस. रूकमा के बयान लिये गये थे जो 164 सी आर पी सी में लिये गये थे। तब तक मुस. रूकमा दिनांक 9-2-93 तक थाने पर पुलिस बाहर क्वार्टर में पुलिस की निगरानी में रही है। जो लेडीज पुलिस की निगरानी में रही है। ... थाने में लोकअप थाने में चौक के बाद बिल्डिग की साइड में है। यह बात गलत है कि रूकमा उस चौक मे ही रहती हो। यह तो थाने के सामने रोड के दूसरी तरफ सरकारी क्वार्टर में पहले तो वहां रही बाद में उसके भाई वगैरा आने के बाद गांव में रही। थाने के पास ही मालियों के मकान मे रही। मुझे भाई का नाम याद नहीं है। उसके साथ लेडी पुलिस रहती थी। मालियों के मकान पर लेडीज पुलिस नहीं रहती थी वह तो लेडीज पुलिस उसके साथ थाने पर रही तब तक रही। वह थाने मे 6-7 दिन रही जो थाने के बाहर सरकारी क्वार्टर में रूकमा रही तब लेडीज पुलिस की निगरानी में रखी। जब मैं मुलजिमान को गिरफतार करके

लाया तब यह रूकमा वहां रहती थी। ... रूकमा आई तब मैंने सीधा बयान लिया था रिपोर्ट दर्ज नहीं की। उसका कोई निशानी अंगूठा नहीं कराया था। क्योंकि पूर्व में मुकदमा दर्ज हो चुका था। इसकी लाश को रूकमा को नहीं संभलाई लाश को उसके पिता के यहां जरिये ए.एस.आई. उदयपाल भीलवाडा के लिए भेज दिया गया था।"

11. Dr. Sunita Dua (Pw.25) examined Rukma on January 31, 1993 and drew report Ex.P-15. Few white stains were found on the petticoat of Rukma. No mark of violence was however found on her body. Sign of inflammation was also not found. Vaginal swab of Rukma was taken and sent to the forensic expert. Dr. Sunita Dua opined as under:-

> "From above findings, it cannot be said confirmly that rape has been done. Confirmation is possible only after examination of vaginal swab report from forensic expert."

12. Factual situation that emerges from the material on record may be summarized thus:-

(i) Death of Foriya was homicidal in nature. Foriya entered into Nata marriage with Rukma.

(ii) After the alleged incident Rukma and appellant Ramesh had been together for 2 days and 3 nights. During this period Rukma had occasion to meet many persons, but she did not disclose the incident to anybody.

(iii) Rukma herself said to relatives of appellant Ramesh that she was his cousin sister.

(iv) Rukma crossed the river while climbing on the shoulders of appellant Ramesh.

(v) Rukma remained in police station for about 15 days and did not go to the house of her in-laws to attend last ceremonies of

her deceased husband.

(vi) There is no evidence on record to show that deceased Foriya before his death was seen in the company of appellants.

(vii) Recovery of knife, pursuant to disclosure statement of Ramesh, allegedly got affected on February 7, 1993 vide Ex.P-14 from the house of Ramesh.

(viii) Motilal (Pw.23), motbir of recovery of knife, deposed that at the time of recovery he was not allowed to go inside the house.

(ix) Bhanwar Lal Sharma, IO admitted that knife was not sealed by him on the spot.

(x) There is no evidence on record to show that from the date of incident till his arrest, Ramesh had any opportunity to go to his house for the purpose of concealing the knife.

(xi) Dr.Sunita Dua (Pw.25) deposed that the opinion in regard to rape could only be given after examination of vaginal swab by the FSL.

(xii) The FSL report, which was produced along with the application at the stage of appeal, did not contain the opinion about vaginal swab.

(xiii) Report lodged by Rukma at Police Station Indergarh was withheld. Even the SHO P.S. Indergarh, before whom Rukma appeared for the first time after the incident, was not examined.

(xiv) Report lodged by Rukma at Police Station Lakheri was also concealed.

(xv) Bhanwar Lal Sharma, IO, could not give explanation as to why the statement of Rukma, who reached at the Police Station

on January 31, 1993, could be recorded only on February 9, 1993.

(xvi) It could also not be explained as to why Rukma was kept for 15 days in the police station. Why was she not sent to `Nari-Shala' (Ladies Hostel).

13. According to the books on medical jurisprudence, there are four tests to be applied to corroborate or contradict evidence with regard to rape. They are the presence or absence of (i) marks of violence about the genitals, (ii) marks of violence on the person of the prosecutrix or accused, (iii) stains of spermatic fluid or of blood on the clothes of prosecutrix or the accused. In the instant case as already noticed, no marks of violence were found on the person of Rukma. Her vaginal swab was taken and sent to FSL, but FSL report did not contain the opinion about vaginal swab. Testimony of Dr. Sunita Dua could not establish that Rukma was subjected to rape. The conduct of Rukma was also no less suspicious. It is doubtful if she made any kind of complaint regarding the alleged incident. She admitted that she did not directly tell anything about the alleged incident to the persons she met. There were large number of infirmities in the prosecution evidence. The story of alleged gang rape was of most suspicious and doubtful character. The trial Judge appeared to be obsessed by the gravity of the offence, because of the lable it bore of murder and gang rape, and by long and laboured reasoning unjustly tried to meet the infirmities in the prosecution case.

14. The evidence of Rukma has been totally discredited in the cross examination and her evidence does not inspire confidence. She remained in

the police station for about 15 days and this possibility cannot be ruled out that she was tutored by the police officials. Delay of nine days in recording the statement of Rukma, even after her reaching at the police station on January 31, 1993, is also fatal to the prosecution case. The testimony of Rukma thus is unworthy of credit and it is not possible to sustain conviction on such evidence.

15. For these reasons, we allow the appeals and set aside the judgment dated February 2, 1996 of learned Sessions Judge Bundi. We acquit appellants Ramesh, Bajrang Lal and Rajmal @ Raju of all the charges. The appellants need not surrender since they already stood enlarged.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

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